

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

September 28, 2012

- I. **ATTENDANCE** - The Vice-Chair called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on September 28, 2012. Members present were Vice-Chair Kathryn Moore, Barry Stumbo, Janice Meyer, James Griggs and Thomas Glover. Member Noel White was absent. Others present were Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; Tracy Jones, Department of Law; and James Marx, Zoning Enforcement.

At this time, Mr. Stumbo offered several remarks about Chairman Louis Stout.

The staff was asked to prepare a resolution, which Mr. Sallee said they would be honored to do.

- II. **APPROVAL OF MINUTES** - The Vice-Chair announced that the minutes of the June 8, 2012 and August 24, 2012 meetings would be considered at this time.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Griggs, and carried unanimously (White absent) to approve the minutes of the June 8, 2012 and August 24, 2012 meetings.

At this time, Vice-Chair Moore asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered to those present.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Vice-Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Vice-Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **A-2012-45: CHEROKEE PARK NEIGHBORHOOD ASSOCIATION** - requests an administrative review of a Zoning Compliance Permit issued for a mobile MRI facility in a Professional Office (P-1) zone, on property located at 1713 Nicholasville Road. (Council District 3)

As this is a 3rd party appeal, there is no recommendation for either approval or disapproval. A report will be made at the public hearing.

Representation – Mr. Dick Murphy, attorney, was present on the appellants' behalf, and requested a postponement of this case for one month to the October 26 meeting.

After determining that there was no opposition to the requested postponement, the Vice-Chair called for a motion.

Action - A motion was made by Mr. Griggs, seconded by Mr. Glover and carried unanimously (White absent) to postpone **A-2012-45: CHEROKEE PARK NEIGHBORHOOD ASSOCIATION** until the October 26 meeting.

- b. **A-2012-53: EFRAN & VLADIMERA ALAMI** - request an administrative review to determine that a drive-through facility in a Planned Neighborhood Residential (R-3) zone would not constitute expansion of a non-conforming use, on property located at 500-502 East Seventh Street. (Council District 1)

The Staff Recommends: Disapproval, for the following reasons:

1. Establishing a retail drive-through service window at this location, in a Planned Neighborhood Residential (R-3) zone, represents an expansion of a non-conforming use in both scope and area of operation, which is not permitted pursuant to Article 4-3(a) of the Zoning Ordinance.
2. Establishing the drive-through window service required an alteration to the exterior of the building, and additional land to be used outside of the building (for the gravel drive), neither of which is permitted pursuant to Articles 4-3(e) and 4-3(g) of the Zoning Ordinance.
3. A drive-through service along the east side of the building has great potential to adversely impact the adjoining residential use, which could negatively impact the existing or future development/ redevelopment of that property. Such an outcome would be contrary to the provisions of Article 7-6(e) of the Zoning Ordinance.

Representation - Mr. Jacob Michael, attorney, was present representing the appellant and requested a postponement to the following month's meeting.

Mr. Emmons requested that the applicant re-notify neighbors since this is the second request for postponement.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs and carried unanimously (White absent) to postpone **A-2012-53: EFRAN & VLADIMERA ALAMI** until the October 26 meeting.

- c. **C-2012-60: COHEN REALTY, INC.** - appeals for a conditional use permit to construct an extended-stay hotel with accessory parking in a Professional Office (P-1) and a High Density Apartment (R-4) zone, at 2368 Professional Heights Drive and 120-126 & 128-134 E. Lowry Lane. (Council District 4)

The Staff Recommends: Postponement, for the following reasons:

1. It is premature to determine whether or not the requested conditional use permit would adversely affect the subject or surrounding properties, for the following reasons:
 - a. The drainage improvements from the proposed extended-stay hotel are uncertain. No storm water basin is currently proposed on the subject property, but it is unclear whether the site will drain to an existing basin located to the south of the subject property.
 - b. An existing landscape buffer exists between the subject property and the homes on East Lowry Lane. However, only part of that existing buffer is shown as a tree protection area, and with the proposal for a perimeter walking trail to be constructed on the site, it is unclear whether or not that landscape buffer is proposed to remain.
 - c. There has been no demonstration that the minimum off-street parking requirements would be met for the adjacent office park, located to the south of the subject property, if the subject property is removed from that park.
2. Because of the uncertainty about the storm water drainage flows from the subject property, and whether adjacent office uses will have adequate off-street parking, it is premature to determine whether all necessary public facilities will be available and adequate for this proposed conditional use.

Representation - Mr. Roger Ladenburger, site designer, was present representing the appellant and requested a postponement, in concurrence with the staff's recommendation, until the October 26 meeting.

Action- A motion was made by Mr. Glover, jointly seconded by Ms. Meyer and Mr. Griggs, and carried unanimously (White absent) to postpone **C-2012-60: COHEN REALTY, INC.** to the October 26 meeting.

- d. **C-2012-55: STANLEY GROSS** - appeals for a conditional use permit to operate a rehabilitation home in a Neighborhood Business (B-1) zone, at 427 Georgetown Street. (Council District 2)

The Staff Recommends: Postponement, for the following reasons:

1. Until alternative parking arrangements can be made, and the number of people and amount of supervision clarified, this proposed rehabilitation home, described as a sober living facility, is inappropriate at this location due to inherent safety hazards.
2. Additional information is needed about the number of occupants, the proposed number of bedrooms, and the type of supervision proposed for this rehabilitation home.

Mr. Emmons requested a one-month postponement, noting a letter that staff had received from the applicant requesting the postponement.

Action- A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (White absent) to postpone **C-2012-55: STANLEY GROSS** to the October 26 meeting.

2. No Discussion Items - The Vice-Chair asked if there were any other agenda items where no discussion was needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board would proceed to take action.

- a. **V-2012-64: AMERICAN BOARD OF FAMILY MEDICINE, INC.** - appeals for a variance to reduce the required front yard from 100 feet to 30 feet along Aristides Boulevard in order to construct additional parking in an Office, Industry and Research Park (P-2) zone, on property located at 1500 Aristides Boulevard. (Council District 2)

The Staff Recommends: Approval, for the following reasons:

1. The requested variance from 100' to 30' along Aristides Boulevard will not negatively affect the public health, safety or welfare, and will not cause a nuisance or hazard to the general public. The parking lot expansion will be well buffered from the street, by a 4' berm with trees and hedge plantings, and will provide the new tenant with much needed off-street parking for their local staff.
2. The variance will not result in an unreasonable circumvention of the Zoning Ordinance, because the front setback of the building on this lot will far exceed the minimum requirements of the P-2 zone, and the landscaping and berm can already be placed as proposed on this property, whether the new parking lot exists or not. The subject property will still fit in very well with the Research Campus development and setting if the requested variance is approved.
3. The subject property, bounded by UK's Carnahan House on two sides and by a conditional zoning buffer area along Newtown Pike to the east, is uniquely constrained. The only side of the subject lot where a meaningful parking lot expansion is plausible is to the north of the existing office building, where the current variance is being requested.
4. Strict application of the Ordinance would pose an unnecessary hardship to the appellant, and to the firm hoping to occupy the office building on this property. Being a large law firm with international clients, they are in need of a large office building with plentiful off-street parking. Constraining the off-street parking would force staff members to park on the street, possibly altering the character of this Research Park for the worse.
5. The variance is not a result of actions taken by the appellant, as the existing parking setbacks, the building orientation on the subject lot, the conditional zoning setback from Newtown Pike and the adjoining Carnahan House lot were all established more than a decade ago.

This recommendation of approval is made subject to the following conditions:

1. The parking lot shall be constructed in accordance with the submitted application and site plan, unless amended in the future by the Planning Commission.
2. The action of the Board shall be noted on the Final Development Plan for this property, which shall be amended to add this off-street parking lot prior to its construction.
3. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
4. The final design of the new off-street parking lot shall be subject to review and approval by the Division of Traffic Engineering.

5. A detailed landscape plan shall be submitted to the Division of Building Inspection prior to completion of the parking lot construction.

Representation – Mr. Rory Kahly, with EA Partners, was present representing the appellant. He said that he had read and agreed to abide by the recommendation made by staff.

Mr. Griggs asked the staff about the special circumstances of this lot because it is rectangular and flat. He went on to discuss if a text amendment to decrease setbacks was more appropriate.

Mr. Sallee stated there has already been one text amendment to modify the setbacks in the P-2 zone in order to reduce setbacks, primarily to cul-de-sac type streets. The unique circumstance with the subject lot is that it is bounded on two sides by streets and on the other side by a lot that encompasses the University of KY's Carnahan House. It's the staff's understanding that the applicant doesn't have the option to negotiate purchasing some of that lot so they can expand the parking. The Newtown Pike side of the property has a scenic easement and conditional zoning restriction for the setback from the arterial road. Staff could not think of any variances that have been granted in the Coldstream Park in the twenty some years it has existed; variances do seem to be very rare in this zone.

Mr. Griggs asked if the setbacks are what they are and the lot is full as it stands, where the special circumstance is for the property, nothing that it is just a lot that has been built out. He asked if that neighborhood is the only P-2 professional office subdivision that we have in Fayette County; and if having that much green space around these facilities is a thing of the past, why this applicant does not apply for a text amendment to change it. Mr. Sallee responded that they certainly could ask for a variance to the open space requirement but in this case, the 200-foot setback required from Newtown Pike allows them to meet their minimum open space requirement with plenty to spare. On this particular lot, the only option that the staff saw that they could expand their parking with hopes that they could also expand the building at some point, was to expand parking in the front direction toward Aristides Boulevard.

Mr. Griggs said that this is possibly the first step to overbuilding this lot. He thought that maybe if they are considering building another structure, they should consider multi-level parking. Mr. Sallee replied they may end up choosing to do that; however in this park, most of the time when different users want larger buildings or additional parking, they move the property lines to suit their needs. This particular lot is constrained on all sides by existing streets and the UK property, which doesn't lend itself to what has been done in the past tenants who want to expand their uses.

Ms. Moore asked the applicant why so much parking is needed and if it was to meet a minimum requirement. Mr. Kahly responded that it is to give the intended users the space and parking they require.

Action - A motion was made by Mr. Stumbo and seconded by Ms. Meyer to approve **V-2012-64: AMERICAN BOARD OF FAMILY MEDICINE, INC.** - an appeal for a variance to reduce the required front yard from 100 feet to 30 feet along Aristides Boulevard in order to construct additional parking in an Office, Industry and Research Park (P-2) zone, on property located at 1500 Aristides Boulevard.

Votes were as follows:

Ayes: Stumbo, Meyer, Glover

Nays: Griggs, Moore

Absent: White

The motion for approval carried, 3 to 2.

- b. **C-2012-56: LEXINGTON UNIVERSAL ACADEMY** - appeals for a conditional use permit to expand a school for academic instruction (pre-K through 8th grade) in an Agricultural Urban (A-U)

zone, at 4580/4590 Nicholasville Road. (Council District 9)

The Staff Recommends: Approval, for the following reasons:

1. Increasing the curriculum and number of students should not adversely affect the subject or surrounding properties, as no physical change is being proposed to the building, parking, or elsewhere on the property.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The school shall be operated in accordance with the submitted application and site plan.
2. A Zoning Compliance Permit shall be obtained from the Division of Planning prior to increasing either enrollment or school curriculum.

Representation – Mr. Munir Shalash of the Lexington Universal Academy was present. He had read the staff's report and had no questions about it. He had also read the conditions and said he was willing to abide by those conditions.

Action- A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously (White absent) to approve **C-2012-56: LEXINGTON UNIVERSAL ACADEMY** – an appeal for a conditional use permit to expand a school for academic instruction (pre-K through 8th grade) in an Agricultural Urban (A-U) zone, at 4580/4590 Nicholasville Road, based on the staff's recommendation and subject to the two conditions.

- c. **C-2012-57: ARABESQUE WORLD DANCE, LLC** - appeals for a conditional use permit to establish a dance studio in a Light Industrial (I-1) zone, at 451-B Chair Avenue. (Council District 3)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this site is well suited for a small dance studio, where the peak hours of operation will be in the early evening after normal business hours.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The proposed indoor recreational facility (dance studio) will be operated in accordance with the submitted application and site plan.
2. The applicant shall obtain a Zoning Compliance Permit and Certificate of Occupancy from the Divisions of Planning and Building Inspection prior to operating a dance studio at this location.
3. Should the appellant offer classes to children and/or minors, parents or guardians shall be required to sign-in and sign-out these students.

Representation - Ms. Tina Farrell of Arabesque World Dance, LLC was present. She had read and understood the staff's report and had no questions. She had also read the conditions and said she was willing to abide by those conditions.

Action- A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously (White absent) to approve **C-2012-57: ARABESQUE WORLD DANCE, LLC** – an appeal for a conditional use permit to establish a dance studio in a Light Industrial (I-1) zone, at 451-B Chair Avenue as recommended by staff and subject to the 3 conditions.

- d. **C-2012-58: LEXINGTON OVERSTOCK** - appeals for a conditional use permit to operate a furniture warehouse with more than 30% of floor sales space in a Light Industrial (I-1) zone, at 156 W. Tiverton Way. (Council District 9)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, provided minimum parking requirements can be met. The

immediate area is commercial in nature, and a furniture store is compatible with the surrounding land uses. If off-street parking cannot be provided on this site, alternative joint parking or an off-site parking agreement will be necessary, and should be able to be obtained.

2. All necessary public facilities and services are available and adequate for the proposed building expansion.

This recommendation of approval is made subject to the following conditions:

1. The proposed furniture store shall be established in accordance with the submitted application and a revised site plan, with the parking calculations corrected.
2. A Zoning Compliance Permit shall be obtained from the Division of Planning, and a Certificate of Occupancy shall be obtained from the Division of Building Inspection, prior to occupancy of the structure.
3. Parking calculations shall be updated to reflect this change in use from a structure with a principal permitted use of storage to the retail sales establishment as a conditional use.
4. Documentation that the required parking can be met and a parking agreement (if needed) is finalized shall be provided to the Division of Planning prior to issuance of a Zoning Compliance Permit, and a Certificate of Occupancy.

Representation - Mr. Frank Culberson, architect with LCM Company, was present representing the owner of the property. He and his client had read the staff's report and understood it. He said that they had read the conditions, and his client was willing to abide by them.

Action- A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously (White absent) to approve **C-2012-58 LEXINGTON OVERSTOCK-** an appeal for a conditional use permit to operate a furniture warehouse with more than 30% of floor sales space in a Light Industrial (I-1) zone, at 156 W. Tiverton Way for the reasons provided by staff and subject to the conditions set forth by the staff.

- e. **C-2012-61: KINGDOM FELLOWSHIP** - appeals for a conditional use permit to establish a church in a Highway Service Business (B-3) zone, at 2009 Family Circle. (Council District 5)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as a church has previously been permitted to occupy this space without any issues or complaints. Furthermore, adequate parking is available, especially considering that the typical hours of operation of other businesses and the church do not overlap.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The site shall be developed in accordance with the submitted site plan, with the exception that an outdoor play area may be constructed at the rear of the building, if desired or necessary, displacing 4-5 parking spaces.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to installation of any outdoor play area or the continued operation of a church.
3. The child care use shall operate in compliance with all State requirements, including those for the child play area (whether indoor or outdoor).

Representation – Mr. Joe Packert was present. He had read the staff report and had no questions. He had also read the conditions and said he was willing to abide by these conditions.

Action- A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously (White absent) to approve **C-2012-61: KINGDOM FELLOWSHIP-** an appeal for a conditional use permit to establish a church in a Highway Service Business (B-3) zone, at 2009 Family Circle based on the staff's recommendation and subject to the three conditions.

- B. **Transcript or Witnesses** - The Vice-Chair announced that any applicant or objector to any appeal before the

Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2012-63: DONNY & DAWN CRAYNE** - appeal for a variance to reduce the required floodplain setback from 25 feet to 4 feet in order to construct a detached garage in a Single Family Residential (R-1D) zone, on property located at 2230 Harrods Pointe Trace (Council District 10).

The Staff Recommends: Disapproval, for the following reasons:

- a. This cul-de-sac lot is not uniquely shaped, compared to others located along this tributary, and it does not have a unique topography when compared to other similarly situated lots in the general vicinity. Cul-de-sac lots and sloping lots are particularly common in this neighborhood and the surrounding neighborhoods that are bordered by this creek.
- b. Granting this variance would be out of character with most other properties in this general vicinity, which do comply with the 25' floodplain setback requirement.
- c. The proposed variance would be excessive, in that over 50% of the proposed structure will be within the required 25' floodplain setback.

Representation - Mr. Dick Murphy, attorney, was present to represent Donny and Dawn Crayne. He distributed exhibits to the Board. When asked if he did not agree with the staff's report, he responded that he did not. John Dehart, architect from thoughtSPACE Architects and designer of this project, was also present.

Mr. Murphy said that they were there to request a variance from 25 feet to 4 feet as the setback from the edge of a floodplain. He wanted to clarify that: 1) they are not in the floodplain; and 2) there is a provision in the ordinance regarding a vegetative buffer area 25 feet from the center line or bank of the stream, depending on what type of stream it is, and they are not in that. There is a 25-foot setback, just like a building setback from a right-of-way, from the edge of the floodplain, and they are within that; however that's an area that can be built in if a variance is granted and does not require flood insurance. He said that the Board has granted a few of these variances in the past.

Mr. Murphy said Mr. & Mrs. Crane have owned and lived in this house for seventeen years. They are at the point where they have a teenage child (9th grade). They need more space and they have been looking around at what their options are, but they really want to stay in this house. They like their neighbors, they like the location, they like the school district they are in and they would like to stay here and do a remodel on their house. He noted that the staff has pointed out that the building at issue here is a two-car garage, and the house already had a garage. Mr. Murphy said that he asked the Cranes why they need a garage here. Ms. Crane said it is because they have a car, a motorcycle, a trailer and a jet ski in the house. They have an active lifestyle and they are active outdoors; and in order for them to redo their house, they need to get these things in the garage.

Mr. Murphy said that the Cranes engaged John Dehart, an architect, from thoughtSPACE Architects. He noted that Donny Crayne went ahead and staked the location of where the garage would be so that

his neighbors on either side of his property could see it. Mr. Murphy pointed out that in his set of exhibits on the first page is a petition from four neighbors, two on each side, saying that they have no objections to this. He mentioned that the one person who has a shared driveway with the Craynes, next door to them, has also signed this petition in support of their application.

Mr. Murphy said he had read the staff report and understood what the staff was saying although he disagrees with them; he feels they have unique circumstances. He said they have a pie-shaped lot, with only 32 feet of frontage on Harrods Pointe Trace. It's a 5-sided lot, and there are always issues with a 5-sided lot. He also said that there is a very steep slope on the property, with a 22-foot drop from the street to the back of the property over a course of 135 feet.

Mr. Murphy referred to some photos that were displayed on the overhead; the first photo showed the property from the street (view from Harrods Point Trace); the second photo showed the elevation drop from the street; the third photo showed the elevation of where the driveway drops off; and the fourth photo indicated the location of the back edge of the proposed garage. He said that very few trees would have to be removed to put the garage in this location.

Mr. Murphy said that he wanted to address the staff's concerns, noting that there are other issues besides the steep slope and shape of the lot that are contributing to the need for the variance. First is the tree situation: this lot contains about 0.37 acre and in the rear yard alone, they counted 28 mature trees. Most of the trees are not in the floodplain or setback area; they are in the yard area of the Craynes' house. The location where Mr. Dehart sited this garage would require the removal of only three trees. If they were to put a detached structure in the part of the yard that is outside the setback area, they would have to remove more trees and would have to do significant paving to get the driveway down to that area. He said that Mr. Dehart sited this garage where he did because no additional paving would be needed, and only the three trees would need to be removed. He said he knows there is a regulatory 25-foot buffer area along the stream, which they are not disturbing; but the real buffer in this area are the trees that screen the property from the properties behind, as shown in the aerial photograph. He noted that the adjoining properties contain the bulk of the floodplain; the big open area is really the floodplain. On the rear of the lots that back up to it, the houses are at least 400 feet from the Craynes' house; and it is really a different subdivision.

Mr. Murphy said the other issue is that there is a large utility pole in the back yard, and there are two sets of guywires holding it up, with three or four wires per set. One of them is directly facing the house, and the other is at an angle. Between the trees, the slope and the utility easement, it would be extremely difficult to get a detached structure in that area. The last thing Mr. Murphy presented on the overhead was a photo showing the grade of the structure, which contained a cross-section of the property. He pointed out the sidewalk and the stream in the back, noting that the drop from the sidewalk to the floor elevation of the garage is 9 feet; and the drop from the floor elevation of the garage to the water level (if the water was occupying the entire floodplain) is 9 feet. He stated the Craynes have never seen it that full. They have lived there 17 years and they have seen it at a level about 2 feet below that, which would be about an 11-foot elevation difference between the base level of the garage and where the floodplain level is. Mr. Murphy was trying to make the point that if they were to put a detached structure in the back of the yard where they wouldn't need a variance, it would be more than 25 feet away horizontally from the floodplain. He said that there are two dimensions of concern when dealing with the floodplain: one is the horizontal dimension, which is the variance they are requesting (i.e., from the edge of the floodplain); but there is also a vertical dimension, which is probably more important when dealing with floodplains. They are requesting 9 feet above the base level. The base of the foundation would probably be three feet above the floodplain elevation, as opposed to a structure in the rear yard that met the horizontal setback, which is required, but would be closer vertically to the highest level of the floodplain. He said taking all of that together, he knew the staff had concerns that the shape and slope of the lot did not constitute a unique enough circumstance; but it was his opinion that if you take the shape and slope of the lot, and the fact that the architect tried to site the garage to leave as many trees as possible, as well as the fact that they have a big utility pole using up most of the back yard, along with the elevation issue, the combined circumstances are unique enough and show why they need to have the structure in this location.

Mr. Murphy mentioned that Mr. Crayne is a mechanical engineer and has staked this out so everyone could see. He has hired an architect to try to get the building in the right location, and he hasn't started work yet. Mr. Murphy concluded by saying that, if the purpose of the setback is to provide visual

screening, they think this location provides better visual screening than if they were to try to find a location for a detached building elsewhere on the lot, because trees can be saved, which is the main visual screening they have. If it is to provide a further safety valve for the floodplain, they think again they are at an elevation that is equal to or greater than the elevation of a detached building would be in the back yard.

Board Questions - Mr. Griggs asked about the scale written on the bottom of the drawing (1 inch = 20 feet), noting that it appeared to be carefully drawn, yet the plat they have in the handout shows the distance between the street and the front of the house to be about equal to the depth of the house. That distance again is about equal to the back property line, whereas in the drawing it looks like there is five times the house width at the front yard and three times at the back.

Mr. Crayne pointed out where the house stops and what direction it follows, as well as the back edge of the driveway. Mr. Murphy indicated that where the house would be starting if they were showing the house. Mr. Griggs asked if it was a drawing of the garage, to which Mr. Murphy replied that it was only the garage. Mr. Murphy said that if he wanted to make their case better, he would have had Mr. Crayne condense the horizontal scale; instead, the horizontal scale is 1 inch = 20" and the vertical is 1 inch = 10'.

Ms. Moore clarified that the front of the garage is 9 feet above the floodplain. Mr. Murphy responded that was correct. She then asked if the back of the garage is 3 feet above the floodplain, to which Mr. Murphy responded that he thought that to be the case. Ms. Moore asked if the lower level was going to be used. Mr. Murphy said that the Craynes would like to use it if they could for storing a lawnmower, etc. Ms. Moore asked, based on the size/height of the garage, if it were behind the house, how far the bottom of the garage would be from the floodplain. She asked if it was actually behind the house, what the elevation would be. Mr. Murphy responded that if they put it behind the house where they wouldn't need a variance, he believed the base would probably be at about the level of the floodplain, but 25 feet back from the floodplain. Ms. Moore asked if there is a hill across the back and where the garage is going to be is on a hill, if it's all the same, except that behind the house it starts a little further back. Mr. Crayne responded that if they put it behind the house, it would probably be 20 feet further back. Mr. Murphy explained that it is the application that sites the garage; and if the structure were to be moved, there is an area outside the setback area where a permit would not be needed, but it would be lower because this area of the property is lower than the other areas. The garage would be down closer to the elevation of the floodplain, even though it would be farther away horizontally from the edge of the floodplain.

Mr. Griggs asked if they had a plat that shows the electrical easement. Mr. Murphy responded that there is one. They have an easement and there are jut-outs for the guy wires, which are out of the easement. Mr. Griggs clarified that the guy wires are out of the easement, to which Mr. Murphy responded that they made a guy wire easement, and put the guy wires out of the easement when they installed the pole. Mr. Murphy pointed out the property, the utility easement going along the back, and the guy wire easement. He mentioned that the floodplain had been changed and that FEMA had done a more accurate mapping, noting that there is a big retention area on the properties behind them.

Mr. Griggs asked if the Craynes had considered using off-site storage to solve this problem. He said it looks like a fairly large house and asked if a portion of the basement is garage and the remainder is either finished or an unfinished basement. Mr. Crayne replied that it is about a 1,900 square-foot ranch; and half of the basement is garage and the other half is unfinished. They plan to finish it in the future. In the 17 years they have lived there, it has filled with things. Mr. Griggs noted that this is actually 3,800 square feet and a portion of the house is garage. He again asked about using off-site storage for their "toys" or renting a space. Mr. Crayne responded that they had thought about it, but it would be nice to be able to keep those items at the house, as he has a pickup truck that is kept at the office and it has been vandalized twice. He said it is expensive to keep something off site.

Mr. Griggs asked if after hearing Mr. Murphy articulate the reasons as to why this lot has special circumstances whether the staff was still of the opinion that this would be precedent setting. He clarified that the words "precedent setting" were not actually used in the findings, but it was said that there were not special circumstances to justify the variance. Mr. Emmons responded that Mr. Murphy had definitely provided some additional justification for this request that was not in the original application; however, the staff still believed that the findings provided in the staff report are still valid findings for the

recommendation regarding the subject property. Mr. Griggs asked if the staff still recommended disapproval, to which Mr. Emmons responded that the staff still would stand by the disapproval recommendation, as noted in the staff report.

Mr. Griggs said, with regard to the petition by the neighbors on either side, in support, he is always a little skeptical because often, to keep peace in a neighborhood, close neighbors do not typically say they are in opposition, even though they might cringe at the idea of the garage being there. He said he didn't know these people personally, but he did not put a lot of weight on that petition.

Mr. Murphy responded that it depends on the neighborhood. He said that he had been out to this property three or four times and met with the Craynes, and he had every reason to believe that the neighbors get along. He said that the reason the Craynes want to stay in their home is because of the neighbors that are there. He said it's sited so the garage will not be obstructing views from other neighboring houses of the creek; and he would have greater concern if they were obstructing views or if the neighbors would have expressed objections. He said that the fact that the neighbors are willing to sign the petition says something, as he finds it very difficult to get people to sign anything. He finds that when a person does sign something, they generally mean it, because apathy usually leads a person not to sign at all. He said the concern here, too, is that if the variance isn't granted, the Craynes always have the option of building some kind of structure in the rear yard that meets the setback. He is very concerned that that would be worse for the area and worse for the buffer than it would be to put the garage at this location.

Mr. Glover asked Mr. Murphy, Mr. Crayne and the staff, if the 25-foot setback is from a boundary of the floodplain. Mr. Murphy responded that is correct; and that it doesn't get into the floodplain at all. Mr. Glover then asked if that is a horizontally measured setback. Mr. Murphy answered, that it is measured along the ground, which is generally a horizontal measurement. Mr. Glover further inquired whether it was a fair statement to say that the character of this lot is that it is steep, so some of this 25 feet is vertical and some is horizontal. Mr. Sallee answered that most of the time, this 25-foot area is sloped because it is going from the edge of the floodplain to a higher elevation.

Mr. Glover asked if the purpose of the setback is to account for a 500-year flood; and if the floodplain is where the water course or waterway is likely to flood or has flooded in the past. Further, if the setback is to accommodate some catastrophic event. Mr. Emmons answered that the 25-foot floodplain setback is actually even beyond the 500-year floodplain as determined by FEMA. The FEMA minimum requirements are that a residential structure be built outside of the floodplain and 1-foot above the floodplain elevation. In Lexington in 2000, the Zoning Ordinance and Subdivision Regulations were revised and the Engineering Manuals were adopted, adding that. We also adopted the best management practices of going above and beyond the FEMA requirements. He said that we now require things to not only be out of the floodplain, but an additional 25 feet horizontally and 2 feet vertically outside of the floodplain, which far exceeds FEMA's requirements. It was for flood protection, a conservation best management practice.

Mr. Glover asked about the purpose of the setback. Mr. Emmons responded that it was for the best management practice of additional buffers outside of the floodplain. Mr. Glover asked what the buffer is for, to which Mr. Emmons responded that it was from the actual floodplain, adding that every time FEMA updates the FEMA maps, those floodplains are developed. The engineering standards are a snapshot in time and often times floodplains increase. The floodplains and our maps are not updated on a regular basis. They were adopted in 1975, then again in 1992, and again in 2008. Each time, generally, the floodplains tend to get bigger because there is more development in or near the floodplain. The FEMA maps are a snapshot in time of what the development and what the floodplain was at the time when the maps are approved for flood insurance purposes. Mr. Glover asked if the FEMA floodplain maps get larger because of the encroachments into the floodplain or setback area. Mr. Emmons responded that each floodplain has the potential to get larger if there is more impervious area or if more water is coming into the floodplain. They also have the potential to get smaller if a new study is done and there is better information put into the engineering model that created the floodplain. In this particular case, the floodplain did shrink a little from the 1992 maps to the 2008 maps. The 25-foot floodplain setback that is before the Board today is from the current regulatory 2008 flood maps.

Mr. Sallee commented that the basic theory of why the setback is put into place for floodplains is to allow access to the edge of the flood waters where structures could impede that access.

Mr. Saylor from Engineering commented that the buffer also serves an important purpose for protecting the floodplain as well. Looking at this application with a 4-foot or 5-foot setback from the floodplain, invariably activity will occur in the floodplain. It's there not only to protect the people from the floodplain but to protect the floodplain from those types of construction activities. He said if people are allowed to build to the floodplain, it is likely that with every structure that is built, they would encroach into that floodplain 10, 15 or 20 feet to build, which makes it very important to have that setback.

Mr. Glover asked, from the drawing in the application, if there is or is not a garage. He asked if there is an existing structure that this replaces or if this just new. Mr. Murphy answered that this is a new structure and the existing garage is under the house. He added that he had a little more information to give to the Board from the architect. He said that the projection Mr. Dehart used to create this was a flat projection of the 25 feet from the edge of the floodplain, which is probably the most conservative way they could do it. If they used some other projection, they might be asking for less of a variance.

Mr. Murphy said the floodplain on this property was greatly reduced in size when FEMA reviewed it in 2008, most likely because of the retention area that he had pointed out on the elevation drawing. He asked to go back to the cross-section drawing. He said they could put this on steel beams or piers, which would leave an area open underneath. Using best practices on construction sites now where there are floodplains, he said that developers are required to build construction fences to prevent access of construction equipment into that area.

It was requested that the site plan be shown again. Mr. Dehart said, regarding the buildable area where staff is particularly suggesting they put a garage, one of the issues is that there is no access to this side of the yard because of the encroachment; and it would mean extending a significant amount of impervious surface to get to that location for a garage. He also said that from a line straight across, the site falls off radically and it will require a significant amount of infill to bring that driveway to an elevation that is serviceable. Otherwise, they will have an 8-foot drop in a driveway, which, in winter, it would be very difficult to get out. He wanted it noted that they would be putting an extra burden in terms of impervious surface on the site by locating the garage further back than where it is proposed, and they are effectively adding no more impervious surface.

Ms. Moore wanted to clarify the location of the current garage on the drawing. Mr. Dehart pointed out that they come down the shared driveway, and the neighbor turns one way into his garage and the Craynes turn and go under the house into their garage. He also pointed out the area that is existing concrete, noting that, particularly if they were to support this garage by columns, they could leave underneath it as natural ground impervious surface. They are effectively not really adding any impervious surface to the site that would increase runoff to the floodplain area.

Mr. Glover said he understood that the floodplain map is the most current that we have from FEMA (2008), and asked if this is the kind of thing that changes from time to time. He asked if in four years, this line is going to move one way or the other. Mr. Sallee said that he wasn't sure it would move that quickly; and that the maps are updated probably every 10 or 15 years. The maps were done originally in the late 70s, then in the early 90s and most recently in 2008.

Ms. Moore asked Mr. Saylor what he thought about putting the structure on beams; and if that would make any difference. Mr. Saylor said that he didn't know that it would. With regard to construction, it would lend itself to maybe a little more assurance that there wouldn't be any activity in the floodplain; but as far as the variance goes, it's still a 21 out of 25-foot encroachment. He said that he would still agree it should be disapproved.

Mr. Murphy commented that they were discussing it further and they could remove about 4 feet of width on the side, which would take it almost 4 feet farther back from the edge of the floodplain.

Mr. Griggs suggested bringing the existing garage up to the driveway and attaching it to the house; i.e., making it an attachment to the house as a 2-car garage. Mr. Murphy responded that he thought the neighbor has to use that area to back in; and they couldn't do that without cutting off the neighbors' rights there. Mr. Griggs asked if both households use that large concrete pad to maneuver in and out of their garages, to which Mr. Murphy responded that they do.

Mr. Stumbo said, after listening to Mr. Murphy and listening to the staff, that rarely does he disagree with the staff because they do an excellent job; but he supported their right to grant a variance, noting that the proposed location is the best spot. He said it seems logical to be in the back of the house, and their request is reasonable. It was his belief that what the Craynes, Mr. Murphy and the architect have created was the best solution; and if they want to build a garage, they have put a lot of hard work and due diligence into this, and he really didn't have a problem with granting this variance.

Ms. Meyer commented that Mr. Saylor gave a good argument about what the value of the floodplain is. She said floodplains are there for a reason and she thought the Board had to take that into consideration when they make their vote.

Action - A motion was made by Mr. Griggs, seconded by Ms. Meyer to disapprove **V-2012-63: DONNY & DAWN CRAYNE** – an appeal for a variance to reduce the required floodplain setback from 25 feet to 4 feet in order to construct a detached garage in a Single-Family Residential (R-1D) zone, on a property located at 2230 Harrods Pointe Trace based on the staff's recommendation.

Votes were as follows:

Ayes: Griggs, Meyer, Moore, Glover

Nay: Stumbo

Absent: White

The motion for disapproval carried, 4 to 1.

(The meeting was recessed at 2:12 p.m., and reconvened at 2:15 p.m.)

D. Conditional Use Appeals

1. **C-2012-59: RYAN CONBOY** - appeals for a conditional use permit to establish an animal crematory in the Agricultural-Rural (A-R) zone, at 7001 Greenwich Pike. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. In particular, the incinerator used for cremation is a clean burning machine that will not produce enough emissions to warrant a permit from the Kentucky Department of Environmental Protection, as noted in the letter submitted by the applicant.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The animal crematory will be operated in accordance with the submitted site plan and application.
2. A Zoning Compliance Permit shall be obtained from the Division of Planning, and a Certificate of Occupancy from the Division of Building Inspection.
3. The applicant shall comply with any applicable State and Federal regulations regarding the operation of an animal crematory, including those for the transport of dead animals, and air quality regulations.
4. The farm road entrance to Greenwich Pike shall be modified by within the next three months by adding asphalt, concrete, a gravel pan, or other suitable paved condition approved by the Division of Traffic Engineering and the Kentucky Transportation Cabinet in order to prevent gravel from spilling onto the public road.

Mr. Emmons presented the staff report, including some pictures of the site. He said this is a conditional use request for an animal crematorium in an A-R zone, on property located at 7001 Greenwich Pike. He passed out letters to the Board. The first letter was from Billy Van Pelt, Director of the Purchase of Development Rights program, stating that the operation of the crematorium does not violate any of the PDR easements that are on this particular property. The staff also received two letters in opposition and 9 letters in support of this application.

Mr. Emmons noted that the subject property is a total of two properties that make up a 92-acre farm known as the Ridge Runner Farm at the corner of Greenwich Pike and Hume-Bedford Road. He further stated that the proposed crematorium is on a very small portion of that 92 acres. The actual equipment only takes up 40 square feet. The next picture was an overhead pictometry picture of the area with the location of the incinerator and the nearest residential home, which is located about 400 feet away from this machine. He noted that the adjoining property owner where the house is located has signed a letter in support of the application. Mr. Emmons then presented pictures, which were submitted by the applicant, of the actual incinerator and a large walk-in cooler inside the barn where they will be able to hold the animals inside the refrigerated unit until such time as they are cremated.

The applicant had submitted as part of their application a letter from the KY State EPA Department stating that the operation of this machine will not produce enough air pollutant particles to warrant the need for a permit. Although they do have as part of their letter a requirement that the number of animals cremated and the amount of fuel use be monitored, so at such time as the applicant's proposal would increase beyond what he had proposed to the State EPA Department that they would be able to re-evaluate the machine to see if it would need an air quality permit for the subject property.

The applicant also runs Conboy Enterprises, which picks up the animals from Fayette County and the surrounding counties and brings them to the crematorium. The applicant has presented that 99% of the animals cremated on the subject property are horses; and that 99% of his clientele wished to get the ashes back after the animal is cremated.

Mr. Emmons commented that the staff felt that this proposed use was not going to create a nuisance to this or surrounding properties. As noted in the report, this has been in operation for about two years. The applicant was unaware that the operation of the crematorium was a conditional use in the A-R zone. When he applied for the purchase of development rights through the PDR program, it was then that the PDR program recognized that this was a conditional use on this farm and recommended that the applicant come in front of the Board for approval. Although the staff cannot condone the operation of a conditional use without the proper approval from the Board, they did find it significant that there hadn't been any complaints about this use in the two years that it has been operating. The closest residential property is about 400 feet away; and directly south, about a third of a mile away, is the Jimtown Rural Settlement. Further, there are a number of residential properties. The staff felt that granting this proposed use would not adversely affect this property or the subject properties and all the necessary public facilities are available. He stated they are recommending approval subject to four conditions.

Mr. Glover asked the staff if someone from Kentucky Air Quality looked at this machine and the site as well to determine that the emissions won't be sufficient enough to require an emissions permit. Mr. Emmons answered affirmatively, and said that was part of the applicant's submittal. The Division of Planning, Metropolitan Planning Organization also has an air quality planner who reviewed this use and had no concern about this application. Mr. Glover then asked if there was a residence that was within 400 feet. Mr. Emmons responded that the farm next door has what appears to be a residence that is about 400 feet away. Mr. Glover inquired whether the owners of that residence had responded in any of the submitted documents. Mr. Emmons replied that he didn't know who actually resides in that house but the property owner for that farm submitted a letter stating that they were in support of this application.

Mr. Stumbo asked Mr. Emmons what happens to large, dead animals in Fayette County. Mr. Emmons replied that the applicant probably will be able to answer that question better than staff. Mr. Stumbo also asked if there are any rules that regulate the disposal of dead livestock in Fayette County. Mr. Emmons responded that staff did not know of any particular regulation, but condition #3 on the staff report would be that the applicant will comply with all applicable State and Federal regulations not only regarding the operation of the crematorium but including those of the transport of the dead animals and air quality. He said it is important to note that part of the Board's approval made it clear that approval of this application today does not relieve the applicant of any State or Federal permits. Mr. Stumbo asked if a farmer had a dead animal on their farm should they worry about whether it died of something that could be transmitted to other animals. If so, transporting it to a different part of the county could be a concern. Mr. Emmons answered, that was a valid concern but he didn't have any actual knowledge on how that would work. Mr. Stumbo then asked if the staff

had any knowledge about animal diseases. Mr. Emmons replied that the Planning staff was not an expert on this issue and that the applicant may be better suited to answer the Board's question.

Representation – Mr. Ryan Conboy was present. In response to the questions related to dead animal removal in Fayette County, he noted that Dr. Stout's office has license holders to remove deceased animals. His company, Conboy Enterprises, picks up most deceased animals in Fayette County. The City used to have a contract with a company called Nation Brothers that received some county money in order to take care of a lot of the dead animal removal; but have since gone out of business. He stated that in order to transport a deceased animal, you must have a license and a piece of equipment that will transport that animal and not leak any type of fluid out of it. Mr. Conboy indicated that they have the appropriate permits. As far as proper procedure for disposal of an animal, KRS 257.160 states about 5 or 6 different options. One option is cremation; and another option is rendering, composting or disposal on a certain type of landfill that has a liner. He said they use a couple of those different options as far as cremation and hauling animals to the landfill, which are how the State recommends that they are disposed of.

Board Questions - Mr. Stumbo asked about the worries the neighbors might have about communicable diseases. Mr. Conboy responded, as far as transporting diseases from point A to point B, his trailers are sanitized daily. Cremating an animal is the number one best solution if the animal did have a disease as far as eliminating those diseases by cremating at a high temperature. The end product is ashes, which are depleted of any bacteria or any diseases that would be transmitted.

Mr. Glover asked how hot is the temperature used. Mr. Conboy answered that the machine operates at 900 degrees to 1500 degrees. Mr. Glover asked if it is a grinder as well a flame. Mr. Conboy responded negatively, and said that the machine is diesel powered. He explained that it has a burner in the bottom with grates; and that you place an animal inside of it, turn the machine on and close the lid. It has a flame underneath the animal on the grates, which creates the majority of the heat, and above the animal there is a chimney that goes into another chamber which is an after burner. There is after burner with another flame that burns at a similar temperature, which burns off any residue or emissions that are coming out of the final product at the top of the machine. Mr. Glover asked if it is a static process, rather than a dynamic process; and if the animal in the machine doesn't move. Mr. Conboy answered, negatively, and that the animal is stationary.

Ms. Meyer asked if the only option someone with a deceased animal has in Fayette County is composting. Mr. Conboy answered no; and that as an animal owner you have several options, including burying the animal on your property. There are specific KRS regulations for that. Or, you may compost (which is a very good option in his opinion); you may have your animal cremated; or you may have your animal picked up by a licensed animal hauler who can then take it to a landfill. Those are the legal options of what to do with a deceased animal.

Mr. Glover asked if the statute KRS 257.160 applies just to people that are licensed or does it apply to all landowners. Mr. Conboy answered that it applies to permitted people and landowners. Mr. Glover then asked if it applied to a landfill operator as well. Mr. Conboy responded that he did not know.

Mr. Glover stated that he was curious about the alternatives if an animal owner loses an animal and it is taken to a landfill, who takes it to a landfill. Mr. Conboy responded, in regards to transporting, he thinks there are 10 to 15 companies in the state of Kentucky that are licensed with the State's vet office to do so or as another option he believed owners can transport their own animals. For example: they could take it to the diagnostic lab to have a necropsy or to the landfill to have it disposed of. Mr. Glover asked if the owner elects to use the landfill option, then is the animal just dumped in the landfill. Mr. Conboy answered that there are a couple of landfills in the State that allow deceased animals since they have a liner and produce methane gas; and they bury the animals with the general garbage in the landfill. He believes they also emit gas that they burn off at the landfill.

Ms. Meyer stated that it sounds like Mr. Conboy is required to have sanitation procedures and no release of fluids. However, an animal owner who is taking off in their own transportation may not be under those same requirements. Mr. Conboy said he thought so.

Mr. Conboy added he has been doing a good job with his operation for the past two years and they

haven't had any complaints. Most of his neighbors were unaware of the operation of the crematorium, which he thinks speaks a lot. He said they are very sanitary and take a lot of pride in what they do. He thinks it is an asset to the community as a service they provide not only picking up and disposing of the animals but giving them the options of cremation for people who have horses as pets or things of that nature. Mr. Conboy said they enjoy doing this for their customers and the customers appreciate what they do.

Vice-Chair Moore asked if he would be willing to abide by the conditions for approval. Mr. Conboy answered affirmatively.

Opposition- Ms. Charlene Horn was present to object, and said that her farm is located at 6922 Greenwich Pike. Her brother has a farm at 6978 Greenwich Pike and she is speaking on behalf of both farms, as he lives in Texas. She said Mr. Conboy is a great listener, gave a lot of answers, and she thought that was nice and really appreciated this. She commented that when you go out to your mailbox and you get a notice letter informing you that an animal cremation center is across from your farm, naturally a lot of concerns come up in your mind and it is good to talk about those and get some answers to the questions that come up. Ms. Horn stated that they had more issues that she thought they need to talk about some more. The first concern was if the City was going to reduce taxes due to the lower taxable property values, as that they feel the appraisers will automatically do this if their farms should come up for sale. If the public realizes that there is an animal crematorium across the street, there would be an automatic response and they would not want to look further at the farms or not pay a value that is reasonable. She also read from her list of concerns, which included: pollution issues; property value concerns; appraisal values; ashes being sent to the landfill; official permit application; oversight; fire hazards; and air quality. She commented that she's always been a supporter of the PDR Program. She referenced an article from 2005 that she brought with her, talking about the importance of the Bluegrass Region. She stated that animal crematoriums have benefits; and without them, we would have more landfill, and different issues there. However, there are 17 counties in the PDR program that surround Fayette County. It's her thinking that the animal crematorium be put outside the 17 county area that is most endangered. There are other places that are just as good for what crematoriums do but they are not in this very special category. She said we all need to preserve this area. Her biggest concern is an issue with the permit application; through possibly a miscommunication back in 2010 when Mr. Conboy first applied for the permit, they called it a pet incinerator, not a large animal incinerator. In her opinion pets are more like 40 pound animals not a 1,000 or 2,000 pound animal. She thinks for the record, before anything is approved in a permanent way, that this should be resolved. She read from the application; and it said because of this being a small animal incinerator he did not need additional regulations but it does not exempt the proposal from other regulatory requirements of Federal, State or local agencies. Ms. Horn also commented that another concern is the community of Jimtown, which is right across from her farm. There is a beautiful church there, houses and mobile homes. They are pretty close and they actually share a fence line. If you are downwind, there might be an issue there. There might also be an issue if you have pre-existing conditions. Ms. Horn said she doesn't live at the farm and she has renters; but she is in and out quite frequently.

Ms. Meyer asked Ms. Horn if she can see this operation from her farm. Ms. Horn answered, not real well and that she had no idea that it was even back there. She has a lot of stuff going on in her mind about taking care of her own property, but there is a large barn that blocks the view. She said you would think it was any other typical farm operation unless you know it's back there, but that the submitted diagram was very helpful. She pointed out her farm and Jimtown on the diagram and displayed several pictures she brought in.

Mr. Griggs stated that it spoke volumes that Mr. Conboy has been in business for two years and Ms. Horn had never seen a plume of black smoke, never had an aroma and she never even knew it was there. Ms. Horn responded that she didn't live there but in Clark County. Mr. Griggs asked if the tenants had ever mentioned anything to her. Ms. Horn answered that she never heard them mention it. Mr. Griggs said he really appreciated Ms. Horn sharing her concerns with the Board.

Ms. Moore commented that she thinks Ms. Horn can take some comfort from the third condition that says that the applicant shall comply with any applicable State and Federal regulations regarding operations of an animal crematorium including the transport of dead animals and air quality regulations. Ms. Moore said it is her understanding that Mr. Conboy received a letter stating that the

use is consistent with the PDR restrictions.

Ms. Meyer commented that Mr. Conboy is providing a necessary support service for those who live in the agricultural zone, farm and have animals. Ms. Horn said when she first got the notification letter and showed it to people, she got a gut feeling that this a terrible thing, and her father, who was an agriculture teacher, invested so much; and she really didn't think he would have liked it. That's why she thinks it should be put out of this area because this area is so special.

Ms. Horn spoke of the water quality issue, as they just got done with a \$6,000 renovation of a well that's been on their farm since the 1980s. She questioned if her ground water would be affected. Ms. Horn expressed that if this was in a non PDR area, it would be great. She said it's her natural instinct to try to protect the farm land.

Opposition - Mr. Benny Oaks, a neighbor on Ferguson Road, was present. He is a little bit farther away than Jimtown, but there are probably 17 or 20 residents real close to this incinerator. Mr. Oaks' biggest question was how many persons in the room would like to have something like this next door to them, within 800 feet. He said you wouldn't like it very much at all. And you wouldn't like it for your property values, and you wouldn't like it for the possibility of the smell. He said that Mr. Conboy reported that he hadn't had any complaints, Mr. Oaks said he had some complaints from neighbors that there is a smell in the area. He didn't know who to report it to or where it was coming from. He searched all over the neighborhood trying to find someone burning garbage or something like that and he didn't see anything until he found out what Mr. Conboy was doing. Mr. Oaks wished that the Board would take that into consideration on this matter. He strongly urged turning down this proposal because it would be the best thing for their community. He supplied a list of conditions to the Board.

After looking at the list, Mr. Stumbo stated that if the City was going to reduce taxes, obviously the Board had no control over that. He also stated that the pollution issues had already been addressed in one of the conditions; and that property values and appraisal values are out their purview as well. As to the ashes to the landfill, they were told already that the ashes are returned to the owners; and asked the staff to comment on resolving the official permit application. Mr. Emmons stated that he believes from a local zoning perspective, today's conditional use hearing in front of the Board will deal with the local Zoning Ordinance.

Mr. Oaks also commented that they were asking for a follow up on testing once a year to make sure the incinerator is operating at peak condition because if the temperature gauge is off or it is not reaching the proper temperature, it will not do an adequate job.

Mr. Stumbo asked Mr. Marx if there was some kind of oversight, some kind of test for clean burning. Mr. Marx answered the most they could do is get more details about the other regulatory agencies and get them "plugged in" to see what checkups they could provide on their end. Mr. Oaks remarked that as this incinerator gets older, it could have a fault in some of the gauges or if it doesn't reach the proper temperature it wouldn't be doing an adequate job. Mr. Marx asked Mr. Conboy if this type of equipment has to be certified or licensed. Mr. Conboy answered negatively. Mr. Marx then stated they didn't have expertise in that and they would have to rely on the other regulatory agencies.

Mr. Emmons remarked the letter that was submitted from the Kentucky Division of Air Quality does state that fuel usage rates and materials throughout the incinerator shall be monitored and recorded respectively on a monthly basis; and that they can proceed with the project described in this submittal without a permit from that Division. But it does need to be done in accordance as it was submitted, maintained and operated in a manner that will ensure continued compliance with the applicable regulations. That is what the staff had mentioned in the staff report that the Division of Air Quality had put in their approval, and that it shall be monitored.

Mr. Stumbo asked if that was applicable to condition #3- the applicant shall comply with any applicable State and Federal regulations regarding the operation of an animal crematorium including those for transport and air quality regulations. Mr. Emmons answered affirmatively. In addition, all conditional uses will be monitored every year and looked at to make sure they're compliant with the Board's conditions of approval. If at any such time it is not, they could bring them back to the Board for a revocation hearing should be there be a problem with compliance with those conditions.

Ms. Moore asked if it would be worthwhile to include an additional condition that the application be updated so that it is clear that they are operating a large animal crematorium. She said that it's within condition #3, but if it was said explicitly it might make it easier to make sure it is monitored. Mr. Sallee replied that could be added as a condition, that they provide documentation from the State that they can operate in that fashion.

Ms. Meyer said there is some sort of regulatory vehicle in existence that this machine will be tested yearly, or if that is not the case, would it be a good idea for the Board to put a condition that yes, it is inspected yearly by a person who is qualified to assess that it is operating at peak efficiency. Mr. Emmons said relying on the letter from the Division Air Quality they stated that records would be kept to ensure that Mr. Conboy is operating the facility just as he had submitted to them. What they would look at would be to contact the Division of Air Quality whenever it did come time to check on this conditional use they would check with the Division of Air Quality and the contacts that are in the file and see if there were any issues that needed to be brought to the Board's attention. He said he did meet with Ms. Horn earlier this week when she came into the office; and one of the things the staff pointed out was the condition #1 that if approved, this animal crematorium will be operated in accordance with the submitted application. If the Board does approve this today, this does not give the appellant carte blanche to start putting in more crematorium machines and upping his operation beyond what he has submitted and what is before the Board today for approval. Mr. Emmons also said if Mr. Conboy wanted to do that, the appropriate mechanism would be to come back before the Board and ask for an increase in the scope of his operation beyond what he is asking for today.

Ms. Moore asked if the application explicitly states that he cremates about four animals a day. Mr. Emmons answered that the application does not state how many animals a day; but it is quite clear on this application that it is the one machine, and that he has the cooler inside where he stores the animals and all of those types of things he presented today are quite clear on the application.

Mr. Griggs remarked, that those in opposition can always call if they think there is a problem with odors or smoke. Code Enforcement, will have a record that he is out of compliance. If you can produce a record that he is not operating this as he is supposed to we would want to know about it and we can take corrective action. Mr. Oaks responded that point is very important that we have a follow up on testing this incinerator. Mr. Griggs reiterated that if it becomes a nuisance then they should make some calls.

Opposition (cont.) - Mr. Joe Stewart, who owns property that backs up to the applicant, said most of his concerns had been addressed. His wife used to work at a facility on Newtown Pike for a veterinary service doing the same job and she is concerned about the odor that it gave off. He understands that Mr. Conboy was in operation for two years and no one was aware of it. They do get a slight odor every now and then but can't say where it's coming from. Mr. Stewart said they are slightly opposed to the facility.

Ms. Moore wondered if they should schedule this appeal for a review in 6 months or 12 months. Mr. Emmons replied the Board can certainly do that. He was handed one additional letter of support during the hearing and passed it out to the Board for review and for the record.

Mr. Stumbo asked the applicant if he charges for the disposal by the weight of the animal. Mr. Conboy answered that they charge for picking up and how far they are going to have to go if they are transporting the animal. If disposing of the animal, it is by size; and if they are cremating a horse, it is whether it is a large or small horse. Mr. Stumbo also asked how long the process takes. Mr. Conboy answered, in order to cremate a 1,000 pound horse, it takes about 8 hours. Mr. Stumbo asked if it physically or literally cannot operate more than about 4 a day. Mr. Conboy responded, realistically you cannot operate the machinery for more than one animal a day. He expanded that it takes 7 or 8 hours to cremate a 1,000 pound animal; however, in doing so, the machine heats up to 1500 degrees and takes another 12 hours to cool down enough to remove the animal. So it is impossible to do more than one a day or one every other day. Other factors such as rain affect timing because you wouldn't want to take the ashes out and get them wet. He said they do about an animal a week and about 50 animals a year. But realistically, if they ran non-stop, they couldn't cremate more than 200 animals a year with the machine. The amount of cremations hasn't increased or decreased since they started.

Mr. Griggs said there is a lot of concern about keeping the machine fine tuned; and he knows if it is

not tuned up, it will be inefficient and they will be burning more diesel fuel than they would like to. He thought there would be a way to monitor the amount of fuel. He asked if there was anyone that keeps an eye on temperature and fuel. He also asked if Mr. Conboy was a mechanic and if he has the machine serviced once a year by a professional. Mr. Conboy responded, being a farmer "we are all self-proclaimed mechanics". However he said he is very knowledgeable about the machine and the mechanics on how it works. The machine basically requires two things to operate -- fuel and air; and there is a little bit of adjustment with that, which from time to time they do adjust. He said as far as having someone come out and work on it, if need be, they can certainly have that done; but they haven't been in a position where they have needed someone to come service it or have the manufacturer come service it. Mr. Griggs clarified that the applicant wouldn't just leave it not working for a long time. Mr. Conboy answered, absolutely not, as they monitor it hourly as it is operating to make sure it is performing at its best. It burns somewhere between 6 and 10 gallons of fuel an hour. Mr. Griggs stated that he has confidence that this will be ok and they are counting on Mr. Conboy to monitor it.

Ms. Moore asked if there were any more comments. Ms. Meyer responded that she would be agreeable to a review. For clarification, Mr. Saltee asked if the Board would prefer a six-month or one year review. A twelve month preference was expressed by an objector. Ms. Moore said the Board would schedule a regular review which will give them an opportunity if it turns out to be a real problem. A 12 month review will be scheduled and as long as there are no problems, what will happen is Zoning Enforcement will report there have been no problems.

Action- A motion was made by Mr. Stumbo, seconded by Mr. Glover, and carried unanimously to approve **C-2012-59: RYAN CONBOY** – an appeal for a conditional use permit to establish an animal crematory in the Agricultural-Rural (A-R) zone, at 7001 Greenwich Pike with the conditions set forth by the staff, including #5 and #6 as noted below:

5. Document state approval for a large animal crematory being operated at this location.
6. The use shall be reviewed by the Board 12 months after approval.

E. **Administrative Review**

None remaining

IV. **BOARD ITEMS** - The Vice-Chair announced that any items a Board member wishes to present will be heard at this time.

- A. The Board and Staff extended sincere sympathy to Mrs. Louis Stout and her family on the loss of Mr. Stout, a long-time member and Chair of the Board of Adjustment. Mr. Stout will be greatly missed by everyone.

V. **STAFF ITEMS** - The Vice-Chair announced that any items a Staff member wishes to present will be heard at this time.

- A. Revocation Hearing - The Zoning Enforcement Staff requested a revocation hearing for Board of Adjustment case **C-2010-53: Southside Pub**, which was approved on June 25, 2010. At least two conditions for approval regarding live entertainment have not been complied with, and the staff requests that the Board take action by scheduling a revocation hearing for the October hearing.

VI. **NEXT MEETING DATE** - The Vice-Chair announced that the next meeting date would be October 26, 2012.

VII. **ADJOURNMENT** – Since there was no further business, the Vice-Chair declared the meeting adjourned at 3:15 p.m.

Kathryn Moore, Vice-Chair

James Griggs, Secretary

